

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
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Announcement

A Message From The Court Regarding Attorney Fee Petitions

The members of the Court, having recently discussed some recurrent problems seen in attorney fee petitions, wish to communicate the following information to members of the bar. In deciding fee petitions, the Court must determine the reasonable number of hours expended by counsel for the party seeking fees, and the reasonable hourly rate of that counsel. Even if there is no objection to either the hours or the rates, the Court has an independent duty to review the petition for reasonableness. Gates v. Deukmejian, 987 F.2d 1392, 1401 (9th Cir. 1993).

Increasingly, the Court has reviewed fee petitions where all or a substantial part of an attorney's time for one day is billed as a "block" without segregating time for individual tasks. This makes assessing the reasonableness of the time spent on a particular task extremely difficult. The Court recommends that members of the bar record time spent on particular, individual tasks and support their fee petitions with a level of documentation that allows the

Court, and opposing counsel, to adequately review the reasonableness of the time spent on a single task.

Additionally, the Court frequently sees time billed for items such as "conference", "telephone call with . . .", or "correspondence to..." with no description of the subject of the conference, the call, or the correspondence. This too makes it nearly impossible to assess the reasonableness of the requested time. Because the burden to document the reasonableness of the requested fees is on the attorney requesting fees, fee petitions that fail to support the reasonableness of the request due to one of these problems may be denied, at least in part.

As for the reasonable hourly rate, the Court has determined that it will use the Oregon State Bar Economic Survey as its initial benchmark. The current edition of the Economic Survey was published in 1998 and is available by calling the Oregon State Bar. The next edition will be published in the fall of 2002. Attorneys may argue for higher rates based on inflation, specialty, or any number of other factors. However, the Court requests that fee petitions address the Economic Survey and

provide justification for requested hourly rates higher than reported by the Survey. Thank you.

Employment

A former automation clerk for the U.S. Postal Service filed an action claiming that his rights under the Rehabilitation Act were violated when the defendant refused to accommodate his disability by permanently re-assigning him to a light duty position. Plaintiff suffered a lower back injury and was unable to operate several machines typically used by automation clerks. Judge Janice Stewart held that plaintiff failed to show that he was "qualified" for his former job because he was unable to perform essential job duties. The court also found that plaintiff could not prove that he was able to perform his job with reasonable accommodations. The court noted that the employer is under no obligation to create a new position for a disabled employee.

Plaintiff presented evidence that defendant accommodated other automation clerks with physical disabilities; however, unlike the plaintiff, the other employees had submitted worker's compensation claims which had

2 The Courthouse News

been granted. The court found that there was no violation of the Rehabilitation Act where plaintiff's worker's comp claim had been denied.

Plaintiff also challenged the defendant's refusal to engage in an interactive process; the court agreed, but held that plaintiff had no remedy where there was no evidence to show that any reasonable accommodation was possible. Defendant's motion for summary judgment was granted in full. Sharpe v. Henderson, CV 00-71-ST (Opinion, Oct. 19, 2001).

Plaintiff's Counsel:

Michael Dehner

Defense Counsel:

Ronald Silver

7 A former clerical worker at the Eastern Oregon Correctional Institution was terminated for failing to disclose her need for reasonable accommodations. Plaintiff suffered from lower back pain and, after being hired, indicated that she would need an ergonomic desk chair and a foot stool. Defendant moved to dismiss plaintiff's claim under § 504 of the Rehabilitation Act on grounds of 11th Amendment immunity. Plaintiff contended that defendant waived any immunity when it accepted federal funding. Judge Anna J. Brown noted that plaintiff was correct under current Ninth Circuit precedent, although the continued viability of the Ninth Circuit's holdings was in question following more recent Supreme Court decisions. Any such claim

could only be sustained against the entity receiving federal funds. On this limited basis, the court denied defendant's motion to dismiss the Rehabilitation Act claim.

Plaintiff also asserted a claim under 42 U.S.C. § 1983; defendant moved to dismiss because of comprehensive state remedies. Judge Brown denied the motion and found the pleading sufficient as against the individual defendant acting in his personal capacity. Evans v. State of Oregon, CV 01-642-BR (Opinion, Sept. 28, 2001).

Plaintiff's Counsel:

Michael Gilbertson

Defense Counsel:

Patricia Urquhart

Civil Rights

Judge Robert E. Jones granted a defense motion for summary judgment in an action filed by several inmates at the Sheridan Federal Correctional Facility. The inmates claimed that the practice of triple celling coupled with extended lockdown periods constituted cruel and unusual punishment. Chilcott v. Mitchell, CV 99-1564-JO (Opinion, October, 2001).

Plaintiffs' Counsel:

David Jacobson

Defense Counsel:

Ken Bauman

Contracts

A viaticals investor filed an action against the company that

procured viaticals asserting claims for breach of contract and breach of fiduciary duties. Judge Janice Stewart held that there was no dispute that defendant failed to supply necessary information, including proof that plaintiff had been designated as the viatical beneficiary. However, under applicable Florida law, no cause of action could be stated for breach of fiduciary duties where the relationship of the parties was premised solely upon the terms of their contract. Accordingly, the court granted in part and denied in part plaintiff's motion for summary judgment. Ochoa v. Accelerated Benefits Corp., CV 00-1075-ST (F & R, May 17, 2001; Adopted by Order of Judge Jones, Aug. 20, 2001).